

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

EARTHLY MINERAL SOLUTIONS,
INC., et al.,

Defendants.

2:07-CV-1057 JCM (LRL)

ORDER

Presently before the court is plaintiff Securities and Exchange Commission's (hereinafter "S.E.C.") motion for clerk's entry of default against defendant Earthly Mineral Solutions, Inc., and Natural Minerals Processing Company. (Doc. # 70). To date no opposition has been filed.

Also before the court is defendants Roy Higgs and Frank Schwartz's joint motion to continue. (Doc. #62). To date, no opposition has been filed.

A. Motion For Default

Federal Rule of Civil Procedure 16(f) provides that certain sanctions are available under Fed. R. Civ. P. 37(b)(2)(A), when a party fails to comply with a pre-trial order. Under Federal Rule of Civil Procedure 37(b)(2)(A), a court may strike a party's pleadings in whole or in part and enter default judgment against the party who has failed to comply.

Defendants Earthly Mineral Solutions, Inc., and Natural Minerals Processing Company failed to comply with this court's order requiring defendants to obtain counsel. (Doc. # 39). Defendants

1 have been previously advised by Magistrate Judge Leavitt that the law does not allow a corporation
2 to appear in federal court unless it is represented by licensed counsel. *Rowland v. California Men's*
3 *Colony*, 506 U.S. 194, 202 (1993).

4 Default against a corporation, or dismissal of its claims, is a permissible sanction for its
5 failure to comply with the requirement that it be represented by counsel. *United States v. High*
6 *Country Broadcasting Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993). *See also Employee Painters' Trust*
7 *v. Ethan Enterprises, Inc.*, 480 F.3d 993, 998 (9th Cir. 2007); *In re America West Airlines*, 40 F.3d
8 1058, 1059 (9th Cir. 1994); *Salman v. Newell*, 110 Nev. 1333 (1994).

9 Having failed to obtain counsel, this court finds it appropriate to enter default against
10 defendants Earthly Mineral Solutions, Inc., and Natural Minerals Processing Company, in
11 accordance with Federal Rules of Civil Procedure 16(f), 37(b)(2)(A), and 55(a).

12 B. Motion to Continue

13 Defendants Roy Higgs and Frank Schwartz's motion to continue (doc. #62) appears to be a
14 request by the individual defendants to continue the scheduling dates for discovery and the
15 submission of a joint pre-trial order. Magistrate Judge Leavitt has signed a revised scheduling order
16 with a revised deadline of October 1, 2010 for the submission of a joint pretrial order. (Doc. # 66).
17 Therefore, this court finds that the defendants' motion is moot.

18 Accordingly,

19 IT IS HEREBY ORDERED ADJUDGED AND DECREED that plaintiff's motion for entry
20 of default (doc. # 70) is hereby GRANTED.

21 IT IS FURTHER ORDERED that defendants' motion to continue (doc. # 62) is DENIED as
22 moot.

23 DATED July 15, 2010.

24
25 
26 **UNITED STATES DISTRICT JUDGE**
27
28